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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/582,714	10/03/2000	Arnaud Vilbert	5725.0622	8388

7590

11/12/2002

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EXAMINER

WELLS, LAUREN Q

ART UNIT

PAPER NUMBER

1617

DATE MAILED: 11/12/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

Advisory Action

Application No.

09/582,714

Applicant(s)

VILBERT, ARNAUD

Examiner

Lauren Q Wells

Art Unit

1617

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

THE REPLY FILED 28 October 2002 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE. Therefore, further action by the applicant is required to avoid abandonment of this application. A proper reply to a final rejection under 37 CFR 1.113 may only be either: (1) a timely filed amendment which places the application in condition for allowance; (2) a timely filed Notice of Appeal (with appeal fee); or (3) a timely filed Request for Continued Examination (RCE) in compliance with 37 CFR 1.114.

PERIOD FOR REPLY [check either a) or b)]

- a) ☒ The period for reply expires 4 months from the mailing date of the final rejection.
- b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection. ONLY CHECK THIS BOX WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

1. ☐ A Notice of Appeal was filed on _____. Appellant's Brief must be filed within the period set forth in 37 CFR 1.192(a), or any extension thereof (37 CFR 1.191(d)), to avoid dismissal of the appeal.
2. ☒ The proposed amendment(s) will not be entered because:
- (a) ☐ they raise new issues that would require further consideration and/or search (see NOTE below);
- (b) ☐ they raise the issue of new matter (see Note below);
- (c) ☒ they are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or
- (d) ☐ they present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: _____

3. ☐ Applicant's reply has overcome the following rejection(s): _____.
4. ☐ Newly proposed or amended claim(s) _____ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).
5. ☒ The a) ☐ affidavit, b) ☐ exhibit, or c) ☒ request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.
6. ☐ The affidavit or exhibit will NOT be considered because it is not directed SOLELY to issues which were newly raised by the Examiner in the final rejection.
7. ☒ For purposes of Appeal, the proposed amendment(s) a) ☒ will not be entered or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: _____

Claim(s) objected to: _____

Claim(s) rejected: 27-30,39-41,43-45,58 and 60-69.Claim(s) withdrawn from consideration: 32-38,42,46-57,59 and 70-73.

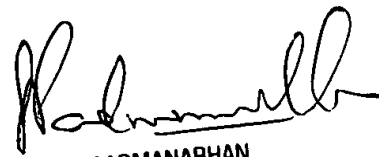
8. ☐ The proposed drawing correction filed on _____ is a) ☐ approved or b) ☐ disapproved by the Examiner.
9. ☐ Note the attached Information Disclosure Statement(s) (PTO-1449) Paper No(s). _____
10. ☐ Other: _____


SREENI PADMANABHAN
PRIMARY EXAMINER

1/12/12

Continuation of 5. does NOT place the application in condition for allowance because: a) the 112 and 103 rejections are maintained for reasons of record in the Office Action mailed 6/28/02, Paper No. 17; b) Applicant argues, "the Office does not directly address the argument that the cited documents fail to disclose a composition comprising at least one polycondensate and at least one film forming polymer". This argument is not persuasive. First, the Examiner respectfully points out that the three primary reference teach the polycondensate as a film-forming polymer. Thus, the primary references teach a composition comprising at least one polycondensate and at least one film-forming polymer. Second, the Examiner respectfully points out that the secondary reference, Betoine et al. teaches film-forming polymers in his compositions. Thus, the cited documents teach the combination of a polycondensate and a film-forming polymer. Applicant argues, "contrary to the suggestions of the Office, this disclosure of Mougin '093 and Mougin '581 is directed to the size of particles forming the pseudolatex as opposed to the droplet size of a hair composition as claimed. . . Thus, the cited documents fail to teach or suggest the recited droplet size of a composition comprising a polycondensation product in combination with a film-forming polymer". This argument is not persuasive. The Examiner respectfully points out that the pseudolatex comprises the polycondensates. Furthermore, the Examiner respectfully points out that selection of particle size is not a patentable modification in the absence of unobvious results. In re Rose, 105 USPQ 237 (CCPA 1955). Applicant argues, "Contrary to the assertions of the Office, the present invention not only describes surprising results, but also includes data clearly demonstrating such results. See. . . page 3. . . and pages 37-39". This argument is not persuasive. First, the Examiner respectfully points out that page 3 contains no data and pages 37-39 are neither commensurate in scope with the instant claims nor comparative with the closest prior art. Regarding the argument to the election of species, for reasons of record, it is maintained, as are the claims withdrawn in the previous Office Action.

Note: The Examiner respectfully suggests that Applicant amend independent claims 27 and 28 to clearly state that the film-forming polymer is other than the polycondensate.


SREENI PADMANABHAN
PRIMARY EXAMINER

11/12/02